

APPEAL NO. 020589
FILED APRIL 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2002. The hearing officer resolved the disputed issue before her by determining that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____. The claimant appealed on sufficiency grounds and asserted evidentiary error by the hearing officer. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant asserts error in the hearing officer's determination that she did not sustain a compensable injury in the form of an occupational disease. The claimant attributes her various medical problems to being exposed to hydrochloric acid fumes while at work on _____. The carrier asserts that the claimant failed to present medical evidence sufficient to support her claim that she sustained an injury and that none of the other workers in the area complained of the same or similar symptoms.

The claimant had the burden to prove a causal connection between her medical complaints and her employment as a laborer. Texas Workers' Compensation Commission Appeal No. 94309, decided April 29, 1994. There was conflicting evidence presented at the hearing regarding this issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence, including the medical evidence, and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer's determination that the claimant did not sustain a compensable occupational disease injury is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also asserts that the hearing officer committed error by admitting a carrier exhibit which was not properly exchanged. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) requires the parties to exchange documentary evidence no later than 15 days after the benefit review conference. In the instant case, the record indicates that the carrier's attorney did not exchange the exhibit in question within the 15-day time period prescribed by Rule 142.13(c). At the hearing, the claimant objected to the admission of that exhibit on the grounds of no timely exchange. The hearing officer overruled the objection and admitted the carrier's exhibit finding good cause. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To

obtain a reversal of a judgment based upon the hearing officer's abuse of discretion in admitting evidence, an appellant must first show that the admission was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We do not find that to be so in this case. The hearing officer made a determination that the carrier used due diligence in obtaining and exchanging the exhibit and she did not abuse her discretion in so finding. Additionally, we note that the exhibit is largely cumulative in nature, and, as such, if any error existed in the admission of the exhibit it would not rise to the level of reversible error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CLARENDON NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge